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To the Right Honourable

WILLIAM Lord MANSFIELD,

LORD CHIEF JUSTICE OF ENGLAND, AND ONE OF HIS
MAJESTY'S MOST HONOURABLE PRIVY COUNCIL,

Upon some late STAR CHAMBER Proceedings
in the COURT of KING's BENCH.

Against the Publishers of the

Extraordinary North Briton, No. IV.

By the AUTHOR of those Papers.

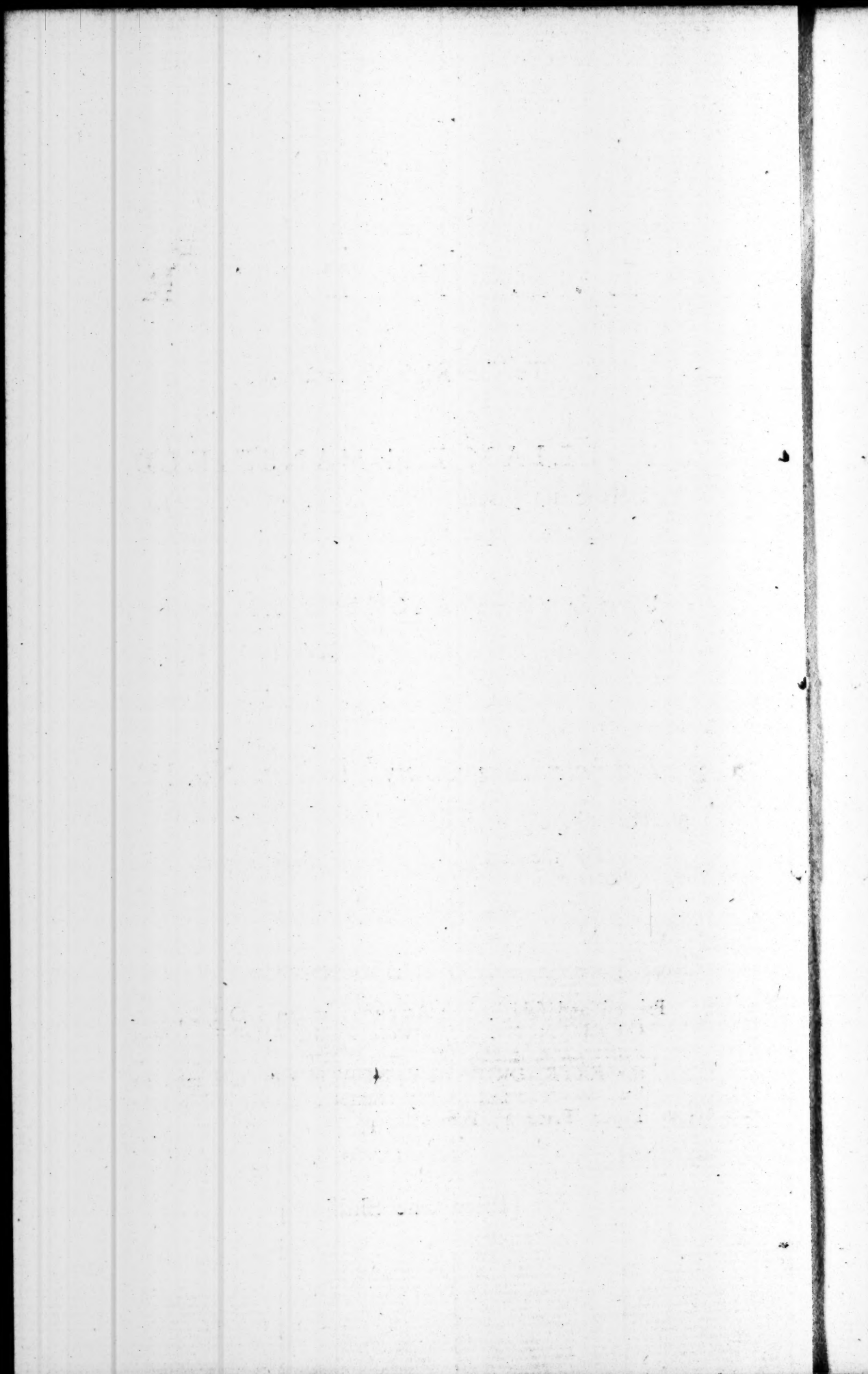
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L E T T E R

TO THE

Right Honourable WILLIAM
Lord MANSFIELD, Lord
Chief Justice of *England*.

MY LORD,

WHEN first I addressed your
Lordship in the *North Bri-*
ton, Number IV. it was with a design
to apprize you of the humour of the
times, and to inform you what kind of
sentence (or rather that the people al-
most unanimously insisted no sentence)
should be passed on Mr. Wilkes ;

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however, your lordship was deaf to remonstrance ; and the peace of the nation appeared to you as a thing of no consequence ; notwithstanding tumult, bloodshed, and desolation threatened us ; and must have followed, had it not been prevented by the prudent conduct of our present suffering Patriot. Not content, my lord, with shewing your partiality and adherence to the measures and influence of an unconstitutional prime minister, a creature of meer favour ; but your lordship hit upon a new scheme for destroying the freedom of Englishmen, (how far that will prevail, or be suffered to prevail, time only can determine) I mean that of proceeding by attachment

attachment against bookfellers and publishers, contrary to the laws and constitution of England. I believe your lordship cannot shew one president, (since the court of star chamber was solemnly abolished) in support of such proceedings. On the 4th of June last Number IV. was read in the court of King's Bench, and Mr. Steare of Fleet-Street, my first publisher, was served with a rule of court, to shew cause why a writ of attachment should not issue for his contempt, which he accordingly did, and at a great expence: but the cause which was shewn by his council availed nothing; and your lordship was pleased to order the rule to be made absolute; and

Mr. Steare was, to avoid a prison, obliged, with two sureties, to enter into a bond of 100 l. to answer interrogatories in the inquisitors office, in the Temple, and afterwards into a further bond for his appearance the first day of this term, before the grand inquisition at Westminster-Hall, in order to receive sentence, before conviction, for the great crime of selling a printed paper with Mr. Wilkes name in it. Now, my lord, as you have assumed a power of oppressing individuals at your pleasure, by which they are put to an enormous expence, contrary to Magna Charta and the act of settlement, it is to be hoped your lordship will also insist (a thing as
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unprecedented as the former) upon paying those expences.

That paper too, I remember, was on the same day, and in the same place, said to be the standard of rebellion (however, thro' the lenity of your lordship, I am not yet executed as a traitor to my country). If I am to be tried, I hope it will be by a Jury, (and not in the inquisition) by twelve impartial men, sworn to discharge their consciences. This great palladium of English liberty can never be destroyed without subverting the whole constitution; every attempt thereto is a notorious attack on our liberties, and should be guarded against with the greatest intrepidity.

dity. In former reigns attempts have been made to take away, or at least to render useless, this great, this darling privilege. The court of star-chamber was a most daring insult, and lasted till the genius of liberty roused her sons, and it was forced to be abolished. The next attempt, my lord, made by corrupt courtserving judges, to overthrow our liberties, was by packing of juries, and not suffering the prisoner to make his legal challenges (of this your lordship is not unacquainted); and by terrifying, brow-beating, and starving into compliance, such juries as were not sufficiently pliable to court judges. This was often practised in the reigns of Charles the second, and James the second:

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in those days of tyranny and oppression, judges have been heard to tell a jury, “ you shall find such a verdict, or you shall starve for it;” and sometimes when they had even resisted all corruptions, and braved all menaces, and done their duties unawed by the frowns of power, they were severely fined. Such steps brought on the revolution, by which our liberties were again secured upon a better foundation : and may we, my lord, (I mean Englishmen) never see that day, that an English jury shall be abolished; or, what may be as bad, ordered by a judge what verdict to find. May we never see the bench of justice profaned by any man, who can shew the least partiality between plaintiff
or

or defendant, between criminal and accuser: should such a man arise, and be warped by any unmanly prejudices of either party, country, or religion; then, my lord, I must warn my countrymen to remember, they are descended from free Britons; and boldly stand in the gap, to remember that they are jurymen, and give that verdict they can answer in a place where no party, no country, no statesman, no judge, no king can oppress for a strict adherence to privilege and justice. For all faults or infringements of the law, which a man may or can commit, he must be adjudged by his peers, except an infraction of the excise laws; in that court they are accusers, parties, and

and judges altogether. It is to be hoped no bad use has been made of that almost boundless power, and I equally hope that no man may be so unhappy as to put that power to the trial; yet since it is the only exemption of our greatly boasted liberties. I cannot help looking upon every extention of excise power, as a step towards abolishing juries.

Whoever, my lord, has fortitude enough to expose the pernicious designs of a wicked minister, and his more profligate adherents, notwithstanding their attempts to blast his endeavours, must ever be esteemed, by all good men, as the lover of his country, and friend to mankind. Despotism

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is the consequence to be dreaded from a kings power, increased beyond its due bounds ; all possible care should therefore be taken to prevent such evils ; and early too, before the heated ambition of a few men shall dare to plunge the nation into the abyfs of confusion and distress, by attempts to fix themselves in absolute power. The revolution, my lord, may be justly denominated the æra of established English liberty ; yet the consequences of mens pursuit of power, may be such, that the equilibrium, which was then settled, may be lost ; when this shall happen, England, to preserve its liberties, must again attempt to vindicate the advantages of her happy constitution. And he,
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my lord, who shall dare to assert that an Englishman has no right to oppose the exorbitant power of a prince upon the throne, is an advocate for passive obedience, a traitor to his country, and an enemy to the revolution. And if it is lawful to oppose the despotic designs of a sovereign, who may be taking gigantic strides to subvert the laws, and set up an arbitrary power on its ruins, it must also be just to resist every other part of the constitution, which may invade the rights and privileges of their fellow subjects.

I shall therefore, my lord, in this letter, speak to you without any disguise: I know your power; but that

shall not deter me from speaking truth ; you may, if you please, indulge your rage against booksellers and publishers ; you may use your endeavours to prevent the discovery of those acts you would wish to keep secret ; and in an arbitrary manner suppress, if possible, all writings wherein your conduct is called in question ; but, my lord, while there is a hand able to write, and a press open in the kingdom, Englishmen will write. There can be no such thing, my lord, as public liberty, without freedom of speech, which is the right of every man ; this sacred privilege is so essential to free governments, that the security of property and freedom of speech always go together ;

gether; in those wretched countries, where a man cannot say his tongue is his own, he can scarce call any thing else so. Whoever, my lord, would overthrow the liberties of a nation, must begin by subduing freedom of speech, a thing terrible to publick traitors; this, my lord, you have attempted to do, but with what success remains to be determined.

In the reign of Charles the first, this secret was so well known, that his ministers procured a proclamation, forbidding all persons to talk of parliaments; Alderman Chambers was prosecuted in the star-chamber, for having said that the merchants were more oppressed in England than
Turkey,

Turky, and condemned in a heavy fine, which reduced him to great poverty. Prinn, a barrister of Lincoln's Inn, was prosecuted in the same infamous court for writing a book, intituled, *Histrion Mastix*, which was condemned to be burned by the hands of the common hangman, himself expelled from the bar, degraded from the degree he had received at Oxford, his ears taken off in the pillory, sentenced to pay a fine of five thousand pounds to the king, and to be imprisoned for life.---Burton, a divine, and Bastwick a physician, were condemned by the star-chamber to the same punishment for having published seditious libels, (as they were termed). It is to be hoped,

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my lord, these oppressions are not to be revived again in our days, under another name. At that time to assert the undoubted right of the subject, and defend his majesty's legal prerogative, was called disaffection, and punished as sedition ; nay, people were forbid to talk of religion in their families ; for priestcraft and statecraft was so combined, that the ministers had cooked up tyranny, and suppressed truth and the law ; and while king James, when duke of York went openly to mass, men were fined, imprisoned, and ruined, for saying he was a papist ; and that Charles the second might live more securely a papist. An act of parliament was passed, declaring it to be treason

treason to say he was one. I would therefore advise your lordship to make it a standing rule of the court of King's Bench, to be a contempt to mention the name of *William Lord Mansfield*, but in Westminster-Hall.

Magistrates, my lord, it is true, ought to be well spoken of while they deserve it ; but to do publick mischief, without hearing of it, is only the prerogative of a tyrant ; the administration of government is only the attendance of the trustees of the people, (by whom they are paid), who are to manage their affairs, and do every thing for their good ; and for whose interest alone all publick matters

ters are or ought to be tranſacted ; ſo it is the buſineſs of the people, to ſee whether they are well or ill tranſacted ; and every honeſt magiſtrate would be deſirous of having his deeds openly examined and publickly ſcanned ; it is only the wicked governors of men that dread what is ſaid of them. In old Rome the people examined the publick proceedings with ſuch diſcretion, and cenſured thoſe who adminiſtered them with ſuch equity and mildneſs, that in the ſpace of three hundred years, not five publick miniſters ſuffered unjuſtly ; but when the commons proceeded to violence thoſe in power had been the aggreſſors ; it is guilt only, my lord, that dreads liberty of

D ſpeech,

speech, which drags it out of its lurking holes, and exposes its deformity and horror to day-light. *Horatius*, *Valerius*, *Cincinnatus*, and other virtuous magistrates of the Roman commonwealth, had nothing to fear from the liberty of the press; their administration shined with the greater lustre the more it was examined; particularly when *Valerius* was accused upon some slight grounds of affecting the diadem, he, who was the first minister of Rome, did not accuse the people for examining his conduct, but approved his innocence in a speech, which gave such satisfaction to them, that they honoured him with a new name to denote he was their father and friend. However,

ever, things afterwards took another turn, Rome with the loss of its liberties, also lost its freedom of speech ; mens words were watched, and feared ; at that time the poisonous race of informers first began ; but banished under the virtuous administration of *Titus, Narva, Trajan, and Aurelius*, but again encouraged under the vile ministry of *Sejanus, Tigillanus, Pallas,* and *Cleander*.

All good princes have ever encouraged the liberty of the press, being sensible that upright measures would defend themselves ; and that honest men would defend them. The virtuous *Timoleon*, the deliverer of the great City of *Cyracuse* from

D 2 slavery,

slavery, being accused by *Demænetus*, a popular orator, in a full assembly of the people, of several misdemeanors committed by him while he was general, made no other answer than this, that, *He was highly obliged to the gods for granting him a request, that he had often made to them, namely, that he might live to see the Syracusians enjoy that liberty of speech, which they now seemed to be masters of.*

When the great *M. Marcellus* was a fourth time consul of Rome, and who had won more battles than any Roman captain of his age, was accused by the *Cyracusians*, of having done them indignities, and hostile wrongs,

wrongs, arose from his seat in the senate as soon as the charge against him was opened, and passing as a private man, went to the place where the accused used to make their defence, and gave them free liberty to impeach him; accordingly, when they had done, he went out of the court with them, to attend the issue of the cause, without expressing the least ill will or resentment towards his accusers; and being acquitted, received their city into his protection; had he been guilty, he would not have shewn such temper or courage, but would have endeavoured to stop their accusations. Old Spencer and his Son, who were the vile ministers and betrayers of Edward the second, would

would have been glad to have stopped the mouths or shed the blood of every honest man in England. They, my lord, (like some others in our days) dreaded to be called traitors, because they were traitors. And the great Sir Francis Walsingham, the most refined politician, and most penetrating statesman that is known in history, that served Queen Elizabeth faithfully, who deserved no reproaches, feared none. A misrepresentation of publick measures is easily detected, by representing publick measures truly; and when they are honest, they ought to be publickly known, that they may be openly commended, but if they are knavish or pernicious, they ought to be publickly

lickly exposed, that they may be publickly detested, and the authors of them. That king James, my lord, was a papist and tyrant was no farther hurtful to him, than it was true of him ; and if the earl of Strafford had not deserved to be impeached, he need not have feared a bill of attainder.

Now, my lord, if our directors and their confederates are not such knaves as the world thinks them ; let them prove to the whole world that they think wrong ; and that they are guilty of none of those villanies which are laid to their charge ; and all those, my lord, who would be thought to have no part of their guilt, must,

must, before they are thought innocent, shew that they did all that was in their power, to prevent that guilt, and to check their proceedings. Freedom of speech, my lord, is the great bulwark of liberty, they prosper and die together ; the liberty of the press is the terror of traitors and oppressors, and a barrier against them. It produces excellent writers, and encourages men of fine genius. Tacitus tells us, the Roman commonwealth bred great and numerous authors, who wrote with equal boldness and eloquence ; but when they were brought under a yoke of slavery, those great wits were no more. Tyranny had usurped the place of equality, which is the soul of liberty,

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and destroyed publick courage. Mankind was terrified by unjust power, and degenerated into all the vileness and methods of servitude, abject sycophancy, and mean compliance, grew the only means of preferment, and indeed of safety, (as it is at this time in England), men did not dare to open their mouths but to flatter.

Pliny the younger tells us this dread of tyranny had such an effect, that the great Roman senate became at last stupid and dumb. Hence says he our spirit and genius are stupified, broken, and sunk for ever; and speaking of the works of his Uncle, he makes an apology for eight of his

E epistles,

epistles, as not written with the same vigour which was to be found in the rest ; for says he, they were written in the reign of *Nero*, when the spirit of writing was cramped by fear. All ministers, my lord, who were oppressors or intended to be oppressors, have been loud in their complaints against the liberty of the press, and always restrained or endeavoured to restrain it ; and have brow-beaten writers, punished them against law, and burnt their writings ; by which they have shewn how much truth alarmed them. There is a singular instance of this in *Tacitus*, he says, that *Cremutius Cordus*, having in his annals praised *Brutus*, and *Cassius*, gave offence
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to *Sejanus* first minister, and to some other inferior sycophants in the court of *Tiberius*, who, conscious of their own infamous characters, took the praise bestowed on every worthy Roman to be so many reproaches pointed at themselves; they therefore complained of the book to the senate, which was then only the machine of tyranny, and it was condemned to be burnt; but this did not prevent its spreading; I therefore, my lord, cannot but wonder, at the stupidity of those statesmen and magistrates, who think to extinguish by the terror of their power the memory of their actions.

Exalted wickedness, my lord, is the safest. I could name an English reign, in which for above twenty years there scarce passed a week that the prince did not venture his crown, and his ministers forfeit their heads; and yet none of these forfeitures were exacted; so corrupt and wicked was the government, and so tame and acquiescing were the people; but these things are obvious, yet how little are they considered; it is safer for a great man to rob a country, than for a poor one to steal a loaf; the wages of villainy protect villains, and justice is only blind where the object is naked. A certain British king used to say, that so long as he could make bishops and judges, he would
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have what law and gospel he pleased.

———An impious and arbitrary saying, and a bold one coming from a prince of so mean a spirit, governing a brave and free people, who were disgraced by his profuse and ridiculous reign, which is one of those that stain the annals of English history. Yet notwithstanding all the absurdity of his government and the smallness of his soul, he found himself able, by the assistance of sycophants, to multiply and entail many evils upon these kingdoms. And it is certain, my lord, that he and some of his posterity found such complaisant bishops and judges, that the religion, and politicks of the court were generally the religion and politicks

ticks of Westminster-Hall, and of Henry the Seventh's chapel ; absolute power in the crown was pleaded, and granted in both those solemn places.

Pray, my lord, had not those judges, counsellors and clergy, who adjudged a dispensing and lawless power to kings, the guilt of a thousand private murderers upon their heads, they as it were signed a dead warrant for their country, and so does he who endeavours to subvert the laws and constitution. This is unquestionably certain, that the least publick guilt, is greater than the greatest private guilt ; and every man in a publick capacity should consider this, that every step which he takes,
every

every speech he makes, every vote which he gives, may affect millions. A good magistrate is the brightest character upon earth, being most conducive to the benefit of mankind, and a bad one is a greater monster than ever hell engendered, he is an enemy to his own species; where there is the greatest trust the betraying it is the greatest treason; every intention manifested by act, to destroy the constitution, being so by the common law of England, and indeed in every country throughout the world, and equally extends to those who would subvert the rights and privileges of the people, as to those who attempt to destroy the person of the king, or to dethrone him.

him. These are crimes, my lord, that the old Romans thought it not possible, to commit, and therefore had no law against parricide, yet there was no want of punishment for parricides from the want of law; those black and enormous criminals were sewed up in a sack and thrown into the *Tyber*; if all those who are guilty of that crime now in England, were thrown into the river *Thames*, below bridge, I much fear the navigation would be totally stopd.

I allow, my lord, even in the most free governments, single men are often trusted with discretionary power, but they must answer for that discretion to those that trust them. Generals

rals of armies, and admirals of fleets
 have often unlimited commissions ;
 and yet are they not answerable for
 the prudent execution of those com-
 missions ? The council of ten in Ve-
 nice, have absolute power over the
 liberty and life of every man in the
 state ; but if they should make use
 of that power, to slaughter, abolish,
 or enslave the senate, and like the
Decemviri of Rome, to set up them-
 selves, would it not be lawful for
 those, who gave them that authority
 for other ends, to put those ten un-
 limited traitors to death any way that
 they could : the crown of England
 has been generally entrusted with the
 sole disposal of the money given for
 the civil list, and often with the ap-
 plication of great sums raised for other

public uses ; yet, if the lord treasurer had applied this money to the dishonour of the king, and ruin of the people (though by the private direction of the court itself) will any man say that he ought not to have compensated for his crime, by the loss of his head and his estate : and the right of the magistrate arises only from the right of private men, to defend themselves, to repel injuries, and to punish those who commit them, that right being conveyed by the society to their publick representative, he can execute it no further than the benefit and security of that society requires he should ; when he exceeds his commission, his acts are as extrajudicial as are those of any private officer, usurping an unlawful authority, that
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is, they are void for this reason, a power to do good can never become a warrant for doing evil.

Yet, my lord, you are sensible, through the villany of corrupt judges, the people have suffered many heavy oppressions, and by the knavish designs of statesmen, this nation has lost several glorious opportunities of rescuing the constitution, and settling it upon a firm and solid basis. Let me therefore warn my countrymen not by the like practices to loose the present favourable offer. ---- *Macbiavel* tells us, that no government can long subsist, but by recurring often to its first principles ; but this can never be done while men live at ease and in luxury, for then they cannot be persuaded to see distant dangers, of which they

they feel no part. The conjunctures proper for such reformation are, when men are awakened by misfortunes, and the approach and near view of present evils, then they will wish for remedies, and their minds are prepared to receive them, to hear reasons, and to fall into measures proportioned for their security. The great authority just quoted informs us what expedients are necessary to save a state under such exigencies; he tells us, that as a tyranny cannot be established, but by destroying *Brutus*, so a free government is not to be preserved but by destroying *Brutus's* sons; let us therefore put on a resolution equal to the mighty occasion; let us exert a spirit worthy of *Britons*, worthy of *Freemen*, who deserve *Liberty*.—Let us
 shew

shew to the world that we are not to
 be enslaved by any man or set of men
 —let us take advantage of the op-
 portunity while mens resentments boil
 high, against those who are the au-
 thors of the many arbitrary and op-
 pressive measures that have been pro-
 jected ; whilst lesser animosities seem
 to be laid aside, and let us by all proper
 means exemplary punish the parricides
 and avowed enemies of mankind, --let
 neither private acquaintance nor per-
 sonal alliance, stand between us and
 our duty to our country, —let all
 those who have a common interest in
 the publick safety, ----- join in
 common measures to defend the
 publick safety, ——— let us pursue
 to disgrace, destruction, and even
 death, those who have brought this
 ruin upon us, let them be ever so
 great or ever so many, —let us
 stamp and deep engrave in characters
 legible to all *Europe* at present, and
 to all posterity hereafter, what venge-
 ance

ance is due to crimes which have no less objects in view than the ruin of nations, and the destruction of millions. Many bold, desperate and wicked attempts have been made to destroy us; let us strike one honest and bold stroke to destroy them — tho' the designs of the conspirators, should be laid deep as the center, tho' they should raise hell itself, and should fetch legions of votaries from thence to avow their proceedings, yet let us not leave the pursuit till we have their heads and their estates.

And we have no reason to doubt but justice will be done us, while we have heaven to direct us, a glorious king to lead us, and a wise and faithful parliament to assist and protect us.

F I N I S.